



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Amended:	05/03/11	Bill No:	<u>Senate Bill 11</u>
Tax Program:	Registered Warrants	Author:	Anderson
Sponsor:	Author	Code Sections:	GC 17281
Related Bills:	SB 120 (Anderson) AB 1044 (Butler)	Effective Date:	01/01/12

BILL SUMMARY

This bill would prohibit a state entity from assessing fines, interest, or penalties based on debts owed to the state by a payee of a registered warrant.

ANALYSIS

CURRENT LAW

Existing Chapter 2 (commencing with Section 17200) of Part 4 of Division 4 of Title 2 of the Government Code provides that the Controller is responsible for issuing warrants drawn from the General Fund for payment of obligations of the state. In instances where the amount payable out of the General Fund is in excess of the balance remaining in the General Fund after deducting amounts earmarked or reserved for payment by law, the Controller can issue a “registered warrant.”

A registered warrant carries a promise to pay the bearer the amount shown on the warrant plus interest, by a date prescribed on the warrant, usually within one year of the date of issuance. Registered warrants bear interest at a rate fixed by current state law from the date of registration to the date of maturity, or the date upon which the State Treasurer advertises that they are payable upon presentation if they bear no date of maturity.

PROPOSED LAW

This bill would add Section 17281 to the Government Code to prohibit a state entity, including the BOE, from assessing a fine, interest, or penalty based on a debt owed to the state by an individual or entity who is a payee named in a registered warrant, in an amount not to exceed the amount of the registered warrant, from the date the state issued the registered warrant until 30 days after the date the registered warrant is payable upon presentation to the state.

This bill would be effective January 1, 2012, and operative for payees named in registered warrants that would be subject to a fine, interest, or penalty based on a debt owed to the state. This bill would be operative from the date the registered warrant is issued until 30 days after the date the registered warrant is payable by the state.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author, who writes, "Senate Bill 11 accompanies SB 120 as a way to relieve IOU recipients of the late fees and penalties suffered during the state's failure to disburse payments it owed. Senate Bill 11 would free small businesses, non-profits, taxpayers, and all who receive IOUs from unfair late-payment charges or penalties incurred because of the state's forced borrowing upon its citizens."
2. **Administrative issues.** BOE staff will work with the author's office to address the following issues as the bill progresses through the Legislature.

- The bill's provisions do not establish a priority for interest and penalty relief, including relief for debts to multiple state entities. We recommend amending the bill to indicate the priority of relief. For example, if a taxpayer was issued a registered warrant on July 2, 2011 for \$1,000 and owed an individual sales and use tax debt of \$2,000 and a Franchise Tax Board debt of \$3,000, should the first \$1,000 of both debts have the interest and/or associated penalty waived?
- The reasons for assessing penalties vary. Penalties may be assessed for filing a late return or payment, not including a payment with a return, or not filing a return. A penalty can be assessed for the nonpayment or late payment of a determination (billing).

Penalties can also be assessed for negligence, fraud or intent to evade the law, operating without the required permit or licenses, and other type of enforcement purposes. If the BOE finds that a taxpayer did not report tax because of negligence or intentional disregard of the law or rules or regulations, a 10 percent penalty is added to a determination (billing). A taxpayer that is found to be negligent in maintaining adequate books and records may be subject to a negligence penalty. If the BOE finds that the tax was not reported due to fraud or the intent to evade the law, a 25 percent penalty is imposed. A penalty is imposed on any person who sells dyed diesel for any use that is considered a taxable use of the diesel fuel. This penalty is \$10 for every gallon of dyed diesel fuel involved, or \$1,000, whichever is greater. Taxpayers operating a business without the required BOE-issued permits or licenses can be subject to penalties. Enforcement type penalties can apply, such as misuse of a resale certificate or failing to provide or post the required notice with respect to sales of dyed diesel fuel. Should these types of penalties be subject to relief under this bill?

3. **Related legislation.** Two bills have been introduced this session related to registered warrants:
 - SB 120 (Anderson) would require a state agency to accept a registered warrant, or other similar evidence of indebtedness issued by the Controller, for payment of any state obligation.
 - AB 1044 (Butler) is a BOE-sponsored bill to require the acceptance of registered warrants as payment for any tax, fee, or surcharge liability owed to the BOE if the registered warrant is issued specifically to that tax, fee, or surcharge payer, provided the Controller makes a specified determination.

COST ESTIMATE

This bill would require the BOE to obtain data from the State Controllers' Office to determine which individuals and business entities issued registered warrants were subject to interest and penalty on a debt imposed by the BOE. The BOE anticipates incurring substantial costs related to programming, reversing previously assessed penalties and interest charges, and issuing appropriate refunds. In addition, the BOE would incur administrative costs related to developing a publication, notifying affected taxpayers, preparing and mailing special notices, training staff, and responding to numerous inquiries from affected taxpayers and the public.

An estimate of these costs is pending. Once the BOE's administrative costs are identified, an appropriation will be requested.

REVENUE ESTIMATE

Pending.

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.